

the Presiding Judge properly awarded the permit to her in this proceeding. She has past connections and has evidenced a dedication and commitment to serving the service area of her proposed station, and is an experienced businesswoman with a proven ability to establish and nurture a successful new business from the ground up. See Davis Exh. 1 at 2 and Atts. A. Moreover, the evidence in this proceeding established that she will bring to the Columbus airwaves her unique background which has developed through her minority heritage, her long-term local and area residency, and her past civic involvement. Specifically, Davis has engaged in a wide, diverse, ongoing series of local and local-area civic activities (Davis Exh. 1 at 2-7) for which superior credit clearly was warranted. The activities involved fundraising activities for charitable organizations,⁴ and participation in organizations that provide assistance to young adults,⁵ other minority group members,⁶ the elderly,⁷ the speech

⁴ Ms. Davis was a Red Cross Neighborhood Volunteer in 1990. Davis Exh. 1 at 7.

⁵ She has belonged to a national women's civic organization called The Columbus Chapter of Links, Inc. for the past four years. Davis Exh. 1 at 2. In 1990 the organization's Project Lead program enabled her to work closely with sixth and seventh graders to help improve their self-esteem and offer alternatives to promote a more positive life-style. Id.

Additionally, from 1990 through 1992 she was involved in mentoring with two established programs. She also was assigned to two young women for one hour or more per month through the Columbus Minority Business Center. Davis Exh. 1 at 3-4. Through a pilot program of the U.S. Small Business Association called the "Women's Network for Entrepreneurial Training," she is assigned a protege on a scheduled basis. Davis Exh. 1 at 2.

Ms. Davis also has been involved in two efforts to provide young adults with business experience. In 1988 Ms. Davis instituted a project through her business where she keeps on-staff a student from one of the Columbus high school career centers who is studying business, which continued through 1992. Davis Exh. 1 at 4. Ms. Davis was a Columbus Chamber of Commerce Project Future Mentor in 1991 in which she employed a high school

and hearing impaired,⁸ and women.⁹ She has been in leadership positions in a

student for six weeks to provide real-life work experience. Davis Exh. 1 at 4.

Finally, in 1991 Ms. Davis was a Linden-McKinley High School Presenter, where she was a speaker to high school students about careers in future technologies. Davis Exh. 1 at 6.

⁶ She participated in a United Way program called Project Diversity from 1990 to 1991, focusing on the preparation of minority men and women to serve as board members. Davis Exh. 1 at 2-3. She continued her involvement with the program by serving on the Advisory Committee to plan future Project Diversity programs. Davis Exh. 1 at 2-3.

Ms. Davis participated in fundraising efforts for the King Center Annual Campaign Chair for Black Owned Businesses in 1991-92. Davis Exh. 1 at 6. This organization solicited financial support for the King Center, which is a multi-cultural center that focuses on programs for children.

Ms. Davis was a Member of the United Way Business Development Committee in 1991, in which capacity she solicited donations from other minority businesses. Davis Exh. 1 at 6.

Ms. Davis has been on the Columbus Regional Minority Supplier Development Council's Input Committee from 1990-present, in which she participates in formation of the organization's programs. Davis Exh. 1 at 7.

⁷ Ms. Davis has been a member of the New Salem Baptist Church Business Development Board from 1991 to 1993. Davis Exh. 1 at 3. The New Salem Baptist Church Business Development Board directs the business activities of the New Salem Baptist Church. Id. In that activity, Ms. Davis was instrumental in overseeing the construction and opening of a senior-citizens housing complex in Columbus, and was involved in the decision-making process for numerous other Church civic activities serving the local Columbus community. Id.

⁸ Ms. Davis has been a member of the Columbus Speech and Hearing Board from 1991 to the present. Davis Exh. 1 at 3. The Columbus Speech and Hearing Board directs the operations of the Columbus Speech and Hearing Center, which is an organization in Columbus which helps improve the quality of life for speech and hearing-impaired people. Id. Ms. Davis is on the Board of Directors of the Center, in which capacity she attends meetings, assists with the fundraising activities for the Center, works on the Program Committee, and is a past member of the Finance Committee. Id. On the Program Committee she helps implement marketing actions to promote the activities of the Speech and Hearing Center to members of the overall public. Id.

number of those activities.¹⁰ Additionally, her technical proposal was unsurpassed in this proceeding, and significantly, not only will she restoring the service previously provided by WBBY-FM, by virtue of her enhanced, directional 6 kW engineering proposal, she will bring improved service through new service to over 50% more persons than previously was provided, which represents the most efficient use of the currently nascent frequency.¹¹

28. The comparative analysis in this proceeding was exceedingly simple, resulting in the adoption of an Initial Decision a mere four days after the parties' submission of proposed reply findings. Davis, essentially, was singularly entitled to enhancements credit in this proceeding -- the only credit to which any applicant could validly lay claim was for past broadcast experience which, standing alone, results in the award only of a "slight" enhancement. Policy Statement on Comparative Broadcast Hearings, 1 F.C.C.2d 393, 396 n.8 (1965), recon. denied, 1 F.C.C.2d 918 (1965). Davis, in contrast, was properly awarded a "significant enhancement" for living in or adjacent to Westerville for the past eight years and living in the service area of the proposed station for nearly the last ten years and for her civic

⁹ Ms. Davis was a Center for New Directions Panelist in 1991 where she was a speaker to women who want to start their own businesses. Davis Exh. 1 at 6.

¹⁰ In the Columbus Chapter of Links, Inc. she has been a chairperson of the organization's vocational education and career options module. Davis Exh.1 at 2. She is on the Advisory Committee of the United Way program called Project Diversity. Davis Exh. 1 at 2-3. She has been on the Board of Directors of the Columbus Speech and Center Board. Davis Exh. 1 at 3. She has been a member of the New Salem Baptist Church Business Development Board. Davis Exh. 1 at 3.

¹¹ Wilburn is proposing only to replicate WBBY's previous service. Davis will provide 55.67% more service than Wilburn.

involvement,¹² a significant enhancement for her minority heritage,¹³ a slight credit for future residency,¹⁴ and a slight credit for her auxiliary power proposal.¹⁵ No

¹² Local residency is a factor of "fundamental consideration" in the licensing scheme (Radio Jonesboro, Inc., 100 F.C.C.2d 941, 944 (1985)), residence in the service area is not as important a factor as residence in the city of license (McClenahan Broadcasting, Inc., 5 FCC Rcd 7269, 7273, ¶ 18 (Rev. Bd. 1990)), but residency in the area adjacent to the community of license is equal in importance to residence within the proposed community of license. Ronald Sorenson, 6 FCC Rcd 1952, 1954 n.2 (1991). Thus, Davis' continuing local residency (in or adjacent to Westerville) (1986 to present) is totally unmatched by any other applicant in this proceeding.

¹³ Davis is of African-American descent. Davis Exh. 1 at 1. As the Commission has stated:

minority ownership is entitled to substantial credit in enhancing an applicant's integration proposal. As the Commission, the courts, and the Commission have recognized, there is a critical underrepresentation of minorities in broadcast ownership, and full minority participation in the ownership and management of broadcast facilities is essential to realize the fundamental goals of programming diversity and diversification of ownership, which are at the heart of the Communications Act and the First Amendment...We assign "high importance" to fostering the participation of heavily underrepresented minorities in the ownership and operation of broadcast stations," and we have consistently granted substantial credit for integration of minority ownership in comparative proceedings.

Waters Broadcasting Corp., 91 F.C.C.2d 1260, 1264 (1982), aff'd, sub nom., West Virginia Broadcasting Co. v. FCC, 735 F.2d 601, 608 (D.C. Cir. 1984), cert. denied, 105 S. Ct. 1392 (1985) (footnotes omitted) (emphasis added). Davis therefore is entitled to a substantial enhancement under this factor.

¹⁴ While Ringer, Wilburn, and Davis all have proposed future residency (Conclusion 57, 67, and 75), only Ringer's and Davis' residency in the area already has commenced. As the Commission recently stated:

little or no credit beyond basic "quantitative" credit for proposing full-time integration of a principal is to be awarded merely on the strength of representations that he intends to commence local residence in the event his application is granted.

other applicant brings any measure of past residency or minority involvement to this proceeding for consideration.

29. In short, the Presiding Judge's decision is fully supported by Commission precedent and policy and the weight of evidence presented in this proceeding. Accordingly, it is respectfully requested that the decision in this proceeding be affirmed. Additionally, despite the decision of the United States Court of Appeals in the case of Susan M. Bechtel v. Federal Communications Commission, Case No. 92-1378 (D.C. Cir., Dec. 17, 1993), Davis continues to have the superior application. In Reexamination of the Policy Statement on Comparative Broadcast Hearings, 7 FCC Rcd 2664 (1992), the Commission already questioned whether it should continue to consider integration proposals (as well as their proposed program service, past broadcast record, or auxiliary power proposals) as part of the comparative hearing process, and has advocated consideration of female ownership, past local residence, and minority ownership as separate enhancement factors (*id.* at 2667, ¶¶ 22, 25 ("[a]s in the case of minority and female preferences, abolition of the integration criterion would mean that we would in the future treat local residence as a separate comparative factor")), while continuing to award preferences for comparative coverage (*id.* at 2667 ¶ 26) and past ownership of daytime-only AM stations (*id.* at 2667-68 ¶ 27), and establishing new preferences for service continuity (*id.* at 2668

Gloria Bell Byrd, FCC 93-460 ¶ 22 (Oct. 1, 1993). In contrast, a "slight" enhancement is warranted for future residency that already has commenced. Newton Television, Ltd., 3 FCC Rcd 553, 555 (Rev. Bd. 1988).

¹⁵ As noted above, ASF and Ringer are not entitled to credit for auxiliary power. *See* paras. 25-26, *supra*. Wilburn did not propose auxiliary power.

¶ 28) and finding a new broadcast frequency (*id.* at 2668 ¶ 29). Applying this new comparative framework, Davis would continue to be virtually the only applicant entitled to any preferences, at all, in this proceeding. Only Davis would be entitled to preferences for minority ownership, past local residence, or past civic activities; only ASF and Davis would be entitled to preferences for female ownership; and Davis' technical proposal would be credited for proposing to serve the largest number of persons in its overall service area. Under the new proposed framework, the other parties' past broadcast experience becomes irrelevant. *Id.* at 2666 ¶ 18.

30. Thus, Davis' application remains the superior application, and it is urged that the Presiding Judge's Initial Decision be affirmed in order to expedite the ability of Davis to re-commence service to the residents of Westerville.

WHEREFORE, it is respectfully requested that these Contingent Exceptions be adopted and that the grant of Channel 280A to Shellee F. Davis be affirmed.

1250 Connecticut Ave.
7th Floor
Washington, DC 20036
(202) 637-9158

December 20, 1993

Respectfully requested,

SHELLEE F. DAVIS

By:

Dan A. Alpert

Her Attorney

CERTIFICATE OF SERVICE

I, Dan J. Alpert, hereby certify that foregoing document was served on December 20, 1993 upon the following parties by First Class Mail, postage prepaid, or by Hand:

James Shook, Esq.
Hearing Branch
Federal Communications Commission
Room 7212
2025 M Street, NW
Washington, DC 20554

Arthur V. Belendiuk, Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, NW
Suite 510
Washington, DC 20036

James F. Koerner, Esq.
Baraff, Koerner, Olender & Hochberg, P.C.
5335 Wisconsin Ave, NW
Suite 300
Washington, DC 20015-2003

Stephen T. Yelverton, Esq.
McNair & Sanford
1155 15th St., NW
Suite 400
Washington, DC 20005

Eric S. Kravetz, Esq.
Brown, Nietert & Kaufman, Chtd.
1920 N Street, NW
Suite 660
Washington, DC 20036



Dan J. Alpert